with this determination. In a telephone conversation with Legal Instruments Examiner (LIE) Steptoe, Ms. Steptoe informed Applicants' attorney that these claims should not have been labeled as "New" because claims with those numbers had been submitted in a previously entered amendment, which had been submitted on April 7, 2009 after a final rejection. When Applicants' attorney pointed out that the Examiner had clearly determined in the Advisory Action of April 16, 2009 that the April 7, 2009 amendment would not be entered, Ms. Steptoe informed Applicants' attorney that it is not up to the Examiner to determine whether or not to enter an amendment, it is up to the LIE, who had in fact 'entered' the April 7, 2009 amendment. Applicants respectfully disagree.

First, an amendment after final like the April 7, 2009 amendment must not only comply with 37 CFR 1.121 in order to be entered, it must also comply with 37 CFR 1.116, and the decision whether or not to enter the amendment clearly lies with the Examiner, not with the LIE (see MPEP 714.13, section III). For this reason, even compliance with 37 CFR 1.121 in an amendment after final is supposed to be evaluated by the Examiner, not the LIE. As stated in MPEP 714.18, "[e]valuation of the amendment after final rejection for compliance with 37 CFR 1.121 should be left to the examiner, and not treated by the technical support staff before forwarding the amendment to the examiner. If the examiner determines that the proposed amendment is not in compliance with 37 CFR 1.121, the examiner should notify applicant of this fact and attach a Notice of Non-Compliant Amendment to the advisory action." Applicants therefore respectfully submit that the purported 'entry' of the April 7, 2009 amendment was either improper or inadvertant. Pursuant to MPEP 714.21, "[i]f the technical support staff inadvertently enters an amendment when it should not have been entered, such entry is of no legal effect, and the same action is taken as if the changes had not actually been made, inasmuch as they have not been legally made." Accordingly, Applicants submit that the April 7, 2009 amendment, which was explicitly refused entry by the Examiner, had no legal effect, and that the October 19, 2009 amendment used proper status identifiers with all claims and should be entered.

Lastly, Applicants point out that, even using the erroneous standard applied in the Notice of Non-Compliant Amendment that the April 7, 2009 amendment had been 'entered', the Notice is defective because it only identifies claims 31-39 as improperly identified. The Notice ignores

claims 27-30 (also identified in the October 27, 2009 amendment as "New") even though the April 7, 2009 amendment had attempted to add claims 27-39 (not 31-39) as new claims.

For the above reasons, Applicants respectfully request entry of the October 19, 2009 amendment as filed and removal of the Notice of Non-Compliant Amendment.

CONCLUSION

Applicants respectfully submit that the Application and pending claims are patentable in view of the foregoing amendments and/or remarks. A Notice of Allowance is respectfully requested. As always, the Examiner is encouraged to contact the Undersigned by telephone if direct conversation would be helpful.

Respectfully Submitted,

/MaryEGolota/

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